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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.L., a Person Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ALLAN L.,

Defendant and Appellant.

D056560

(Super. Ct. No. J517256)

APPEAL from a judgment of the Superior Court of San Diego County, Carol  
Isackson, Judge. Affirmed.

Allan L. appeals following a January 2010 family maintenance review hearing. He contends the court did not enforce its visitation order, instead delegating to Allan's son, J.L., and to J.L.'s therapist, the authority to decide whether visits would occur. Allan also contends he was denied reasonable reunification services because the San Diego

County Health and Human Services Agency (the Agency) did not implement the visitation order. We affirm.

## BACKGROUND

In September 2008, when J.L. was nine years old, the Agency filed a dependency petition alleging Allan hit J.L. on the legs and thighs with a belt 10 to 20 times, causing multiple bruises. The pattern of bruises was consistent with blows from a belt and a doctor determined the injuries were nonaccidental. J.L. said Allan had hit him with a belt several times in the past and he was afraid to return to Allan's home.

J.L. was detained in Polinsky Children's Center and then with his mother, T.H. In October 2008 the court entered a true finding on the petition, removed J.L. from Allan's custody and ordered J.L. placed with T.H.<sup>1</sup> The court ordered services for both parents.<sup>2</sup> Allan's case plan consisted of individual therapy and parenting education. The court ordered that his visits be supervised at a visitation center or in a therapeutic setting. Between October 2008 and February 2009 the Agency gave Allan referrals to individual therapists on four occasions. By April 2009 Allan had not begun participating in services. He claimed he had not received the referrals and that the judge had told him he

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<sup>1</sup> Before making the true finding, the court granted the Agency's request to amend the petition by deleting an allegation that Allan admitted hitting J.L. with the belt.

<sup>2</sup> The court did not say whether Allan's services were reunification services or family maintenance services.

did not have to do anything. Allan believed J.L. had been removed from his custody "because I hit [J.L.] on the hand with a belt."<sup>3</sup> Allan denied hitting J.L. anywhere else.

J.L. began therapy in October 2008. He was in therapy throughout this case<sup>4</sup> to address his fear of Allan, his anger toward Allan and the behavioral problems J.L. experienced as a result of the abuse.<sup>5</sup> Because J.L. feared and distrusted Allan and was angry at him, J.L. resisted contact. Although J.L.'s fear decreased with therapy, his emotional and behavioral difficulties increased when he was near Allan's home or when the subject of fathers arose, even in a general sense. J.L.'s therapist recommended that J.L. not be forced to visit. The therapist said she would not recommend conjoint therapy until Allan had taken responsibility for the abuse and progressed in individual therapy. According to the therapist, J.L.'s "prognosis for resolution of issues related to the physical abuse could improve" if Allan took "direct responsibility."

At the April 14, 2009, six-month family maintenance review hearing, J.L.'s counsel said she thought J.L. "would like to have a relationship with [Allan], would like [Allan] to be doing services." The court found that Allan had been provided reasonable services

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<sup>3</sup> J.L. reported Allan had hit him on the hand with a belt a couple of weeks before the inception of this case. J.L. also said that a year earlier, Allan had grabbed him, picked him up and forcibly put him in Allan's car. J.L. disclosed that he had been exposed to domestic violence between Allan and T.H.

<sup>4</sup> At times, J.L.'s attendance was inconsistent, presenting an obstacle to treatment.

<sup>5</sup> J.L. was physically aggressive, defiant and agitated, and his functioning was impaired. He was afraid Allan would abuse him again and angry at Allan for the abuse and for refusing to take responsibility for the abuse.

and ordered that contact with J.L. take place in a therapeutic setting. The court told Allan, "The bottom line is we want to see you have contact with [J.L.]" and "You need to follow the Court's orders before you have that contact." The court directed the Agency to ensure that Allan had current therapy referrals and ordered Allan to contact a therapist unless the social worker told him otherwise.<sup>6</sup> The court stated, "generally, when we put kids in therapy with parents . . . they each have an individual therapist so they can work on their individual issues . . . . I don't know that anybody will set up a conjoint session . . . if you don't have your individual therapist." The court told Allan that the sooner he found a therapist, the sooner conjoint therapy would begin.

One week after the hearing, the Agency gave Allan more referrals. In May 2009 Allan told the social worker that his job and school attendance prevented him from participating in services. Allan acknowledged he had received referrals and said he was in the process of calling potential therapists. He asked for parenting referrals and the social worker gave him a telephone number to call.

By August 2009 J.L.'s behavioral problems at home had increased<sup>7</sup> and his school performance and attendance had diminished. J.L. was afraid Allan would abuse him and take him as he walked home from school. J.L. complained of stomachaches and headaches and refused to go to school. On September 10, J.L. curled up in a fetal

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<sup>6</sup> The social worker never told Allan not to contact a therapist.

<sup>7</sup> Some of the problems involved J.L.'s interactions with relatives in T.H.'s home. There were also housekeeping problems. T.H. arranged for the relatives to move out and improved her housekeeping.

position and refused to get out of T.H.'s car when they arrived at school. He became upset and said he was afraid Allan would come to the school.

In September 2009 Allan again asked for parenting referrals. He said he had a letter for J.L. and the social worker told Allan to bring the letter to the Agency's office. In the letter Allan said he was "sorry about a lot of things" and "I promise to never spank you again." The letter was given to J.L., who responded that Allan had said " he wouldn't put [J.L.] in a scary situation before but still did it." The Agency gave Allan more referrals on two separate occasions in September.

By October 2009 J.L. said he was no longer afraid Allan would come to his school, but J.L.'s therapist reported increases in J.L.'s fear, anxiety, nightmares and angry outbursts.<sup>8</sup> On October 30 J.L. underwent a psychological evaluation. Psychologist Daniel O'Roarty noted J.L. had mixed suppressed emotions toward Allan. Dr. O'Roarty believed that once J.L. accepted contact with Allan, J.L.'s inner conflicts might lessen, decreasing his external symptoms, such as anger directed at family members, and his internal symptoms, such as refusal to attend school. Dr. O'Roarty believed J.L.'s anger and outbursts might also be due to a limited tolerance for stress and J.L.'s boredom with school contributed to his escalating behavior. Dr. O'Roarty recommended J.L. continue in therapy focused on eventual contact with Allan.

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<sup>8</sup> The outbursts included physical aggression, property destruction, yelling, throwing things and slamming doors.

In November 2009 Allan attended two sessions of a six-session parenting course. In December he told the social worker he would be moving out of state in February 2010. When the social worker asked if he intended to participate in services, Allan responded, "I don't want [J.L.] to keep going through this, either way I'm not going to be able to see him, I'm not sure that I'm going to continue."

By January 2010 no visits had taken place. J.L.'s therapist had tried to prepare J.L. for contact with Allan. J.L.'s anxiety had lessened and his behavior had improved, but he continued to say he did not want contact.<sup>9</sup> Allan had not begun therapy or taken responsibility for the abuse. J.L.'s therapist was therefore unwilling to begin conjoint therapy sessions and to observe or supervise a visit.

In an undated note attached to the Agency's January 2010 report, Allan wrote that he had contacted a therapist on the Agency's referral list, but the therapist was booked for the next two weeks, so Allan would choose another therapist.<sup>10</sup> In a letter<sup>11</sup> filed on January 6, Allan claimed he had attended therapy. He also stated, "I've admitted to my

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<sup>9</sup> When the social worker asked J.L. why he did not want to visit, J.L. said, "I don't know."

The social worker mistakenly believed she could arrange a visit outside a therapeutic setting. She told J.L. she had scheduled a visit for January 5. J.L. said, "Ok[ay], but I really don't want to." When the social worker arrived to take J.L. to the visit, however, he refused to go. He continued to refuse although the social worker encouraged him to go to the visit. She did not arrange any other visits.

<sup>10</sup> In the note, Allan claimed all of the telephone numbers for parenting instructors had been disconnected except one, and he was awaiting a return call from that instructor.

<sup>11</sup> The court treated the letter as a declaration.

mistake [and] accepted responsibility. . . . I'm putting this behind me for now . . . . [J.L.] can write me whenever he likes and in a couple years once he's older he'll have a better understanding of things and we can pick up where we left off." Allan asserted that T.H. was manipulating J.L. T.H., however, said she encouraged J.L. to have contact with Allan because she believed it would "be healthier for [J.L.] in the long run."

At the January 6, 2010, 12-month family maintenance review hearing, the court noted it had ordered "visitation . . . in a therapeutic setting," and the order did not require J.L.'s consent, his therapist's agreement or an exercise of discretion by the Agency. Thus, "the question was not if [visitation] should occur but when." J.L. had suffered serious physical abuse and, as a result, "very serious emotional scarring." At 12 years old, he could not be forced to visit; his therapist could not force him without destroying the therapeutic relationship; and J.L. was not psychologically ready to visit. Despite being given many referrals, Allan had not seen a therapist and had not demonstrated any progress toward being able to participate meaningfully in visitation. The court concluded Allan had been provided reasonable services and terminated his services.

## DISCUSSION

Allan contends J.L. expressed indifference regarding contact, not anger or fear, and because there was no finding that visits would be detrimental to J.L., the court was required to enforce its visitation order. Allan argues the court instead delegated to J.L. and J.L.'s therapist the authority to decide whether visits would occur, and did not

designate a therapist to oversee Allan's progress in services.<sup>12</sup> We reject these contentions.

At the January 6, 2010 hearing, Allan's counsel stated she would make no argument regarding the October 2008 visitation order. In his opening brief Allan complains of a lack of visits "during the entire 14 months of this dependency case." The Agency's brief correctly notes the time for challenging the October 2008 and April 2009 orders "has long since passed." In his reply brief, Allan limits his contention to the period between April 2009 and January 2010.

Allan did not appeal the October 2008 and April 2009 orders, although he was represented by counsel during that entire period. He cannot now challenge those orders. (*In re Cicely L.* (1994) 28 Cal.App.4th 1697, 1705.) We therefore consider only whether, after the April 14, 2009 hearing, the court delegated to J.L. and his therapist the authority to decide whether visits would occur and whether the Agency failed to implement the April 14 visitation order.

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<sup>12</sup> Allan also complains "the Agency insisted on keeping [J.L.] in therapy with [the] same therapist" who made no progress in preparing J.L. for visits. While there were therapeutic setbacks due to J.L.'s inconsistent attendance, problems at home and other factors, nothing in the record indicates J.L.'s therapist was in any way ineffective.

Allan asserts the social worker recommended that visits occur at J.L.'s discretion. The Agency's detention report, jurisdictional and dispositional report and April 2009 review report did contain such statements, but the proposed case plans attached to the latter two reports merely state, "Visits Must Be Supervised" and say nothing about J.L.'s discretion. At the April hearing the Agency's counsel noted the statement in the April report regarding J.L.'s discretion was incorrect. Reports prepared for subsequent hearings did not recommend visitation at J.L.'s discretion.



The juvenile court has the responsibility to determine whether visits should occur. (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757-758; *In re S.H.* (2003) 111 Cal.App.4th 310, 317.) A visitation order is invalid if it delegates complete discretion to decide whether visits will take place. (*In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1237; *In re S.H.*, *supra*, at p. 317; *In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1505.) The order must provide "broad 'guidelines as to the prerequisites of visitation or any limitations or required circumstances.'" (*In re Moriah T* (1994) 23 Cal.App.4th 1367, 1377, quoting *In re Danielle W.*, *supra*, at p. 1237.)

Here, on April 14, 2009, the court ordered visitation in a therapeutic setting. It did not delegate the decision whether visitation would occur to J.L., to his therapist, to the Agency, or to anyone else. The court did, however, condition contact on Allan's participation in individual therapy. This condition was permissible. (*In re Chantal S.* (1996) 13 Cal.4th 196, 202, 213 [visitation to be facilitated by child's therapist, with father to progress in therapy before visits began].)

There was no evidence Allan began therapy or even obtained a therapist, although the Agency gave him many referrals. Instead, Allan made excuses, variously claiming he had not received referrals, the court said he did not have to participate in services, he was moving out of state, he had already attended therapy and the therapist he contacted was booked. Because Allan never met the condition of participation in individual therapy, visitation in a therapeutic setting could not begin.

Allan is incorrect in asserting the court did not designate a therapist to oversee his progress. His individual therapist was to fulfill that role, and J.L.'s therapist would

necessarily consult Allan's therapist regarding Allan's ability to participate in therapeutic contact a in way that would not harm J.L. The condition that visitation take place in a therapeutic setting necessarily implied a protective role for J.L.'s therapist; otherwise the contact would be no different than simple supervised visitation.

This is not a case where the court delegated the duty to decide whether visitation would occur or where the court failed to enforce a visitation order. Rather, the court carefully considered Allan's right to visitation and J.L.'s psychological state. The court protected the interests of both by ordering contact in a therapeutic setting conditioned on Allan's participation in individual therapy. This judicial effort to foster contact between J.L. and Allan was proper. "[W]ith ample reason" (*In re Danielle W.*, *supra*, 207 Cal.App.3d at p. 1238), J.L. was afraid of Allan and angry at him.

In light of our conclusion, we need not address Allan's contention he was denied reasonable reunification services because the Agency did not implement the visitation order. Nor need we address the contention of J.L.'s counsel that Allan's services were family maintenance services, not reunification services.

DISPOSITION

The judgment is affirmed.

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NARES, J.

WE CONCUR:

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BENKE, Acting P. J.

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O'ROURKE, J.